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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,998	07/05/2005	Jean-Jacques Jurus	33900-168PUS	1602
27799	7590	09/29/2006	EXAMINER	
COHEN, PONTANI, LIEBERMAN & PAVANE 551 FIFTH AVENUE SUITE 1210 NEW YORK, NY 10176			SIPOS, JOHN	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/517,998

Applicant(s)

JURUS, JEAN-JACQUES

Examiner

John Sipos

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

MISCELLANEOUS

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 32-37 have been renumbered as 31-36. This is due to the omission of Claim 31.

The information disclosure statements of 12/15/04 and 4/7/05 are not complete. The reference form of the first one refers to "1 of 2 sheets" however only one sheet has been submitted. The second IDS comprises of only the cover sheets but no reference sheet was submitted.

Claims 19-36 rely on the function and use of the claimed structure and attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since this language does not meet the analysis set forth in MPEP 2181, i.e. "means for" or "step for" is not being used, or no function is set forth, or too much structure is set forth, the Examiner assumes that applicant does not wish to invoke 35USC112, paragraph 6. For an example of such language see claims such as claims 19, 22 and 34. All the claims should be reviewed and if applicant wishes to rely on the function of the elements the claims should be set forth in proper "means plus

function” terms or they should recite the specific structure and operation of the elements.

DRAWINGS

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claim 30, i.e. the structure of the compacting bars with the semi-rigid strips, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-36 are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite in that it is unclear what is being claimed.

The following should be amended:

- The terms “preferably” and “if appropriate” should be deleted since they make the scope of the claims unclear (see claims 19,22,23,37);
- The dependency of claim 24 should be changed to depend on claim 22 to provide proper antecedence for the term “said steps a) and e)”;
- The dependency of claim 30 should be changed to depend on claim 28 to provide proper antecedence for the compacting mechanism. Also, in line 2, “compactor arm” has no antecedence. It should be changed to “compactor bars”;
- In claim 31, the first two lines are duplicates of the language used in claim 19;
- Claim 35, and the scope it is attempting to cover, are unclear since the method steps of the process are not set forth;

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- Claim 36 is indefinite since it recites in a single claim both an apparatus and the method steps of using the apparatus. These types of claims have been found ambiguous as per In *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990. (See MPEP 2173.05(p)).

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 36 and 37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to neither a "process" nor a "machine," but rather embrace or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. (See MPEP 2173.05(p)).

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-25 and 31-36 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Fuss (6,560,948). The patent to Fuss shows a collector

device comprising a storage area for folded covering material 24, drive rollers 33 that drive the covering downward to form bags, means for moving the rollers into and out of engagement of the bag material 46, seal and cutter mechanism 49.51,61 and means 16-18 for opening the central feeding orifice mounted above the drive rollers. The use of a compartment around the storage area would have been obvious to one skilled in the art to maintain area clean. The opening of the central orifice by detection of the product is read on a manual activation of the opening means upon moving an object to the opening.

The use of sensors and automatic operation of the various mechanisms (claims 31 and 35), the use of relatively movable plates with openings to allow access to a container or a machine (claim 32), slidable storage boxes (claim 33) are well known in the art and the Examiner takes official notice that their use is common knowledge in the packaging art. In the above cases the modification of the Fuss device would have been obvious to one skilled in the art for the known benefits of each modification. For example, automatic operation makes for amore efficient operation, slidable plates provide for complete closing of the container and slider storage boxes allow removal of the completed bags.

Claims 27-30 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Fuss (6,560,948) as applied to the claims above, and further in view of the patent to Gausman (2,956,383). The patent to Fuss lacks the use of a compacting mechanism. The patent to Gausman shows a bagging device comprising of arms 44,45 that move against the filled bag to compress the product below the sealing mechanism

(see Figure 10) to permit the formation of a better and cleaner seal. It would have been obvious to one skilled in the art to provide the bagging device of Fuss with a compacting mechanism as shown by Gausman to compact the product below the sealing mechanism to form a better seal. The use cushioning or semi-rigid material to contact a bagging material to prevent the tearing of the material is well known in the art and the Examiner takes official notice that its use is common knowledge in the packaging art. It would have been obvious to one skilled in the art to provide the arms 44,45 with such softer material that would contact the bags to prevent tearing of the bag.

ALLOWABLE SUBJECT MATTER

Claims 26 is objected to as being dependent upon a rejected base claim, but **would be allowable if rewritten in independent form** to include all of the limitations of the base claim and any intervening claims and if rewritten to overcome the indefiniteness rejections.

ADDITIONAL REFERENCES CITED

The cited prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

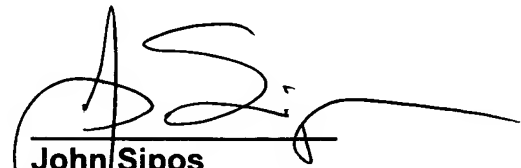
The patents show collection devices with Mabry and Tsuruta showing drive rollers that disengage from the bagging material.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

The **FAX** number for U.S. Patent and Trademark Office is **(571) 273-8300**.



John Sipos
Primary Examiner
Art Unit 3721